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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/858,235	05/17/2001	Andrew Sinclair	08364.0017	1787
22852	7590	01/20/2006	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			STEVENS, THOMAS H	
			ART UNIT	PAPER NUMBER
			2123	

DATE MAILED: 01/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/858,235

Applicant(s)

SINCLAIR, ANDREW

Examiner

Thomas H. Stevens

Art Unit

2123

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. 12/21/05.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

1. Claims 1-51 were examined.

### ***Section I: Prosecution Reopened***

2. Based on the 1/11/06 interview, the prior art rejection within the final office action has been withdrawn, thus prosecution is reopened with a new non-final office action.

### ***Section II: Non-Final Office Action (3<sup>rd</sup> Office Action)***

#### ***Claim Objection***

3. Claim 5 lines 2-3 are unclear as to precession of steps; particularly the phrase "comprises the step of storing in association with". Suggestion: "comprises the step of storing each batch to be initiated..."
4. Claim 5 recites the limitation of "initiated data" in line 3. It's unclear as to which initiated data" the said data is referring to.
5. Claims 5 and 6 recite the limitation of "said determining of a minimum possible processing times" in line 4 (claim 5), line 5 (claim 6). It's unclear as to which "processing said determining of a minimum possible processing time" the limitation is referring to.
6. Claim 7 recites the limitation " said specified time periods" in line 8. It's unclear as to which "said specific time periods the limitation" the limitation is referring to.

#### ***Claim Rejections - 35 USC § 101***

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1: While the final limitation recites "generating output data indicative of a simulation", no actual simulation is performed. No tangible result and unclear of intended use.

Claim 9,30 : Final step of "selecting a time increment" has no tangible result.

Claim 22: The claim elements of the apparatus have intended uses, for example, "for storing", "for determining", "operable to"; however, no simulation is performed and no tangible result is provided.

Claim 18, 38: Claims 18 states "A method of simulating", however no simulation is performed with any tangible result. Claim 38 states "An apparatus for simulating" however no simulation is performed with any tangible result.

Claims 47-48 limitations of a recording medium is unclear since a recording medium could be pencil and paper.

### ***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1, 5, 38 and 48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

10. In claim 1, line 20 stating "of said minimum process times", is not mentioned previously.

Sections of claim 18 need clarification:

- Line 6, "said storage" is believed to be referring to "storing model", thus the limitation should be "said storing"
- Line 9 appears out of place. Perhaps the limitations of "said generation of output data comprises" should immediately follow "model data" on line 6.
- Line 10, the limitation of "said step of said simulation" is unclear as where it was stated previously.
- Line 13, the limitation of "the previous step" is unclear as to which previous step.
- The Office suggest the following amendment to lines 5-10:

11. -- -- Generating output data indicated of a simulation of an industrial process utilizing said stored model data comprises \*\*\*\*\* for each step in a simulation, characterized in that said storing step comprising storage data indicative of one or more continuation conditions in association with each of said process; said generation step includes the steps of determining which of said plurality of processes are to be determined to be simulated in said storing step; -- --

12. Claim 38 recites the limitation "said step" in line 12. There is insufficient antecedent basis for this limitation in the claim.

13. Claim 48 is rejected since its unclear how a process running on computer generates an apparatus.

### ***Section III: Response to Applicant's Arguments (2<sup>nd</sup> Office Action)***

#### ***Claim Objection***

14. Applicant is thanked for addressing this issue. The objection is withdrawn.

**102(b)**

15. Applicant is thanked for addressing this issue. Based on the interview conducted on 1/11/06, the rejection has been withdrawn (see interview summary).


***Correspondence Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mr. Tom Stevens whose telephone number is 571-272-3715, Monday-Friday (8:00 am- 4:30 pm EST).

If attempts to reach the examiner by telephone are unsuccessful, please contact examiner's supervisor Mr. Leo Picard ((571) 272-3749). The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Answers to questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) (toll-free (866-217-9197)).

January 13, 2006

  
Paul L. Rodriguez 1/19/06  
Primary Examiner  
Art Unit 2125

TS